

1959 LEGISLATION AFFECTING THE MINOR COURTS

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TRENDS EVIDENCED IN LEGISLATION

The 103rd General Assembly continued the interest of earlier assemblies in improving our system of minor courts. While this interest has been manifest to scholars and practicing lawyers for several years, it drew general public attention only when a long-time goal was reached in 1957: the abolition of the justice courts and the office of justice of the peace. This was achieved by extending the territorial jurisdiction of municipal courts wherever the idea could be sold, and by creating a new system of county courts for areas not served by municipal courts.

It was the duty of the Legislature in 1959 to work out specific, isolated problems relative to procedure, jurisdiction, and administration in the light of our brief experience with the new minor court complex. It was the pleasure of the Legislature to further dignify and make more self-sufficient the county courts, and to make practice in county courts and municipal courts more nearly uniform and more like that of the common pleas courts. While far from being identical twins, county courts and municipal courts are now recognizably brothers. Swann's Treatise, the well-thumbed bible of the kitchen and front-porch squires, will seldom be taken off the shelf by the county judges who succeeded the squires. They will be more likely to follow the practices and precedents of the municipal and common pleas courts.

In keeping with the new character of the county courts, the county-wide jurisdiction of both municipal courts and county courts outside territorial boundaries was cut back to eliminate some over-lapping and to gain more complete responsibility within the area served. The municipal courts were made more useful as area courts where the jurisdiction extends beyond the limits of the respective municipalities which give them their names. Some day perhaps the municipal names of the courts will be replaced by some euphemism which emphasizes the service which can be given to a large district. Meantime, extensions of municipal court territory are difficult to sell to annexation-conscious neighbors.

By some caprice, the Legislature failed to enact the bill which removed most of the remaining references to justices of the peace from the Revised Code. These references remain to remind us of work still to be done to adapt our courts to today's circumstances.

TRAFFIC OFFENSES

It is ironic that the increasing use of the automobile which has brought to our minor courts an avalanche of citations for traffic offenses, has not

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changed our view of distance. While fifteen miles may take only a few minutes to travel instead of a couple of hours as in the past, the time we are willing to spend to get to court is still less time than it takes.

The threatened loss of mayors' jurisdiction to hear cases involving moving traffic violations after January 1, 1960, under Revised Code section 1901.04 and 1907.031,¹ and the long-time policy of the state highway patrol to take violators to courts of record where there is a choice of courts with concurrent jurisdiction, brought more than a hundred mayors forward as spokesmen for allegedly angry motorists taken past the mayors' offices to more distant municipal courts, and for the motorists of the future who would be taken to county courts after the 1960 deadline. Some few merely mourned the loss of revenue, lashing out at lawyers, judges, and loss of home rule powers to emphasize their concern for the public. Most mayors, however, pointed sensibly to the very real problem posed to small municipalities served by county courts or neighbor-city municipal courts: the problem of keeping village streets protected while the one or two policemen were away entering charges or testifying against an offender. The Legislature recognized that traffic cases, by their very volume, pose a special problem, and met the problem by permitting mayors to retain their concurrent jurisdiction with county and municipal courts to hear cases involving moving traffic violations, whether the charge is made under ordinance or state law, if the offense is committed on highways within the municipal boundaries. Mayors thereby lose the right to hear charges for violations on highways outside city or village boundaries, but except for the few communities which banked heavily on revenue from costs and fees, the mayors appeared to be well-satisfied with their intramural jurisdiction. Well they might, for we perhaps went further than circumstances required in allowing them to retain jurisdiction of state cases.²

Paralleling this cut-back to municipal limits was the removal of police court jurisdiction to hear any misdemeanor cases arising within four miles of the municipal limits or on municipally-owned land lying outside the municipality in which the police court was established.³

THE MINOR COURTS AS AREA COURTS

With the volume of traffic cases still offering a compelling reason to bring courts close to home in the outlying areas, the Legislature cleared the way for decentralizing court activities to some extent.

It empowered the county commissioners, in the same enactment which created the office of clerk of the county court, to authorize the establishment of branch clerks' offices for receipt of bail and other purposes,⁴ and

¹ OHIO REV. CODE (Supp. 1958).

² H. B. 571, 103d Gen. Ass. (1959) effective November 6, 1959, amending OHIO REV. CODE §§ 1901.04, 1907.031.

³ H. B. 571, *supra*, amending OHIO REV. CODE § 1903.06.

⁴ H. B. 571, *supra*, enacting OHIO REV. CODE § 1907.101.

empowered municipal courts similarly to set up branch offices and to place special deputy clerks in charge.⁵

A new section, Revised Code section 2935.15,⁶ permits the amount of bail in misdemeanor cases to be set by a schedule fixed by the county, police, municipal and mayors' courts, so that resort need not be had to the magistrate for each offense.

The Legislature also empowered the judges of the municipal courts to sit outside the municipality from which their respective courts take their names.⁷ Such authority has occasionally been assumed in municipal courts with extended territorial jurisdiction, but some judges have hesitated to make provision for "riding circuit" without the specific sanction of the law.

TERRITORIAL AND MONETARY JURISDICTION

With the county courts increasingly useful as professional courts, the monetary jurisdiction was increased to give exclusive original jurisdiction up to three hundred dollars (formerly one hundred dollars) in civil actions for money and to replevy personal property, and to give concurrent jurisdiction with the court of common pleas in such cases involving up to five hundred dollars (formerly three hundred dollars).⁸ It is quite likely that later Assemblies will raise these monetary limits even higher.

The Legislature then turned to the municipal courts to lift some of the overburden of cases from common pleas courts, and increased the original monetary jurisdiction from two thousand dollars to three thousand dollars. Cuyahoga County, usually exceptional in some regard, has had its top limit raised to seven thousand five hundred dollars (formerly five thousand dollars), while the Columbus municipal court was given jurisdiction to five thousand dollars because of the particularly great number of suits and appeals involving the state of Ohio which are heard in the common pleas court of Franklin County.⁹

Members heard testimony that while this would reduce the backlog of cases in common pleas courts eventually by cutting back filings, it would not burden most municipal courts to assume a larger jurisdiction. With salaries not keyed to case load, but to population, we may assume that many of our municipal courts have not only the capacity but also the willingness to handle more work. The Legislature was gratified and having had a very happy experience with municipal courts was glad to oblige.

Quite some time and effort went into the task of keeping the county and municipal courts out of each other's bailiwicks in counties where both

⁵ H. B. 571, *supra*, enacting OHIO REV. CODE § 1901.311.

⁶ S. B. 73, 103d Gen. Ass. (1959) effective January 1, 1960.

⁷ S. B. 350, 103d Gen. Ass. (1959) effective July 21, 1959, enacting OHIO REV. CODE § 1901.021.

⁸ H. B. 571, 103d Gen. Ass. (1959) amending OHIO REV. CODE § 1909.04.

⁹ H. B. 571, *supra*, amending OHIO REV. CODE § 1901.17.

systems function. Concurrent jurisdiction was often a godsend when the choice was between a justice court and a municipal court but the reason for it failing, shared responsibility, has been eliminated in cases, such as forcible entry and detainer actions, in which the justice courts and municipal courts both had county-wide jurisdiction.¹⁰

Similarly, municipal courts were held within their territorial limits in cases exceeding the exclusive original jurisdiction of county courts, in liquor and unemployment compensation cases, cases involving violation of health, safety and employment regulations, and in damage cases arising out of the negligent operation of motor vehicles. Formerly municipal courts had concurrent jurisdiction county-wide on these cases.¹¹

Time will prove whether we were wise in removing from the municipal courts the cases involving sums over the exclusive original jurisdiction of county courts, since jurisdiction of these cases will now be shared only with the common pleas courts, but at least we were consistent in dividing minor court jurisdiction. I think we may reasonably expect that the county courts are well enough accepted to be used to the limits of their jurisdiction.

Not so consistent was the new provision made for municipal courts to handle debtors' trusteeships on a county-wide basis, regardless of monetary and territorial limits on jurisdiction, except where jurisdiction would interfere with the jurisdiction of another municipal court.¹² This was merely another instance of a practical consideration causing the legislature to deviate from a fairly well-marked path, as we had done once before in the instance of saving mayors' court jurisdiction.

The 1957 law creating the county courts designated all territory in a county which was not included in the territorial jurisdiction of a municipal court as being a "district". Judges are elected by the voters of the entire district. Where the population warrants, the district is then divided into "areas" and a single judge assigned to each area.¹³ This is described in Revised Code section 1907.071, *supra* as "... the area in which each judge shall have jurisdiction to the exclusion of any other judge of such district. . . ." but the exceptions are more numerous than the single reference given therein would indicate since it has to do only with absent and incapacitated judges.

In clearing away overlapping jurisdictions, the legislature did not fail to confine certain kinds of cases arising within these area subdivisions to the area itself in the 1959 enactments. Thus, cases involving cruelty to persons and animals, neglect and abandonment of children, illegal employment of women and children, violations of liquor law, narcotics law,

¹⁰ H. B. 571, *supra*, amending OHIO REV. CODE §§ 1901.19, 1909.02.

¹¹ H. B. 571, *supra*, amending OHIO REV. CODE §§ 1901.19, 2931.04, 3781.04, 4143.16, 4143.27.

¹² H. B. 571, *supra*, enacting OHIO REV. CODE § 1901.021.

¹³ OHIO REV. CODE §§ 1907.052, 1907.071 (1958).

sanitary and safety regulations, illegal practice, unlawful entry and detainer, etc., are now held within the respective areas of jurisdiction where formerly jurisdiction was not merely district-wide but county-wide.¹⁴

SUBJECT MATTER JURISDICTION

An interesting extension of the subject matter jurisdiction of the Cleveland municipal court was made in an amendment to Revised Code section 1901.18 of the omnibus bill.¹⁵ The court is permitted to hear actions for injunctions to prevent or terminate violations of ordinances and regulations of the city made under the exercise of the city's police powers. While given only to the court which requested it in order to be able to deal with new actions arising under the urban renewal and slum clearance programs of the city, there is no reason why this authority to hear such injunction cases could not be given profitably to other municipal courts for use in cases involving health and building regulations generally.

Strictly speaking, this is a new remedy rather than a new subject, but as a device to insure compliance with ordinances and regulations, it seems likely to take the place of prosecutions for violations in many cases and to open up an entire new area of effective law enforcement to the Cleveland municipal court.

OTHER ADMINISTRATIVE CHANGES

The Legislature found the professional judges of county courts, whom we had aimed to attract, discouraged by the paper work of maintaining records for their courts. Provision was made for having the clerk of the common pleas court serve as clerk of the county courts as well unless the county commissioners and county court judges agree on appointing a clerk for the district.¹⁶ So many alternative plans for choosing a clerk were considered that this small problem turned out to be one of the most vexing of all to solve. Complicating the problem is the variation in case-loads from one court district to another and the necessity of passing laws of general application which often results, as here, in a mandate coupled with a permissive alternative.

Provision is made for sheriffs as well as constables to serve summons, execute orders of arrest and attachment, serve subpoenas, make returns, and receive funds from a garnishee, etc. thereby making the sheriff a ministerial officer of the court. With the elective office of constable abolished,¹⁷ the courts are otherwise dependent on special constables and appointed constables named by the township trustees.¹⁸

¹⁴ H. B. 571, *supra*, amending OHIO REV. CODE §§ 1923.01, 2931.02, 3781.04, 4143.16, 4143.27.

¹⁵ H. B. 571, *supra*.

¹⁶ H. B. 571, *supra*, enacting OHIO REV. CODE § 1907.101.

¹⁷ H. B. 571, *supra*, enacting OHIO REV. CODE § 509.01.

¹⁸ H. B. 571, *supra*, amending OHIO REV. CODE §§ 1907.301, 1911.04, .08, .09, .18, .19, .23, .26, .31, .37, .50, 1913.02, .03, .36, .42, .43, 1917.08, .14, .19, .20, .21, .23, .26, .27, .29, .30, .31, .32, .33, .35, .36, .43, 1919.02, .03, .04, .05, .06, .07, .08, .09, .11, .13, .14, .18, 1923.14.

One of the major achievements of this Legislature was passage of bills to increase judges' salaries. House Bill 143¹⁹ increases the basic annual salary of municipal judges from six thousand dollars to seven thousand five hundred dollars. The per capita allowance remains the same, as does the limitation that salaries shall not exceed the salary of common pleas court judges of the county, but since common pleas court judges' salaries were also raised, and since the statutory top limit on municipal judges' salaries was raised from thirteen thousand dollars to fifteen thousand dollars, many judges who had already been up to the ceiling will get higher salaries at the beginning of ensuing terms.

Following the precedent in other courts having more than one judge, staggered terms were set up, with the first turn of the wheel to begin in 1962, when the present four-year terms will all expire. In the closing rush, some rather extraordinary language was inserted by the Senate into Revised Code section 1907.051,²⁰ as amended by House Bill 571,²¹ with the result that the 1961 Legislature already has one job cut out for it to do. The new law states that beginning in 1962, in all courts having two or more judges,

. . . not less than one-half of the number of such judges shall be elected for a term of four years, and not less than one-half of the number of such judges minus one shall be elected for a term of two years. Thereafter approximately one-half of the number of judges in each such district shall be elected for a term of four years at the general election of each even number year.

Imagine a court with two judges to be elected in 1962. Not less than one-half of this number equals one or more, i.e., possibly two, to be elected for four years. Not less than one-half the number of judges minus one equals either one or none, at the option of whoever is doing the arithmetic. Thus either one or none is to be elected for a two-year term. It seems to be entirely possible to elect either two for four years, or one for four years and one for two years. If the first option is exercised, what then happens in the next even-number year, 1964? There would be no vacancy and "approximately half" of the twosome is not likely to volunteer to run again with two years still left on the original term of election. One might argue that since the language could conceivably be construed to direct a one-and-one election, it should be so interpreted, but this would result in "not less than one-half" being interpreted as "one" in the first half of the phrase, and as "two" in the second half of the phrase in order to have something from which "one" can be subtracted. Similarly, with four judges, the combination that could result is that three judges could run for four years, and one for two years. In 1964, "approximately one-half" would be two,

¹⁹ 103d Gen. Ass. (1959), effective November 2, 1959.

²⁰ Effective November 6, 1959.

²¹ 103d Gen. Ass. (1959).

but which one of the first three four-year-termers will be the one to have to run for election and who will make this decision?

One may guess that the sponsor of the proposed amendment represented a county with an odd number of judges—or perhaps a county with a number of odd judges. Problems like this occur sometimes in legislation as a result of taking a particular problem, like how to stagger the terms of a five-judge court, and then solving that problem with a generalized statement that creates its own new problems.

Another election problem was dealt with more successfully although the solution is at best only partial: the problem of disposing of extra judges where the territory of a municipal court is extended to take in part of a county court district. Since all county court judges in courts having more than one judge are elected district-wide and for a specified term, the office of one or more of the county court judges could not be deemed abolished simply because part of the district was taken away. Even if a judge died or resigned, the vacancy would exist to be filled until the end of the statutory term. The Legislature amended section 1907.071²² in House Bill 571,²³ to provide that where the territory of a municipal court reduced the territory to be served by county courts, vacancies are not to be filled unless the population formula set out in section 1907.041,²⁴ continues to justify the same number of judges. Further, the legislature directed the common pleas court to redetermine the areas of jurisdiction within the district at the time the size of the district is reduced, and permitted the court to again re-determine the areas at such later time as a vacancy might occur. This provision might not appear to be of great interest but it is likely that the Legislature will wish to continue to encourage extensions of municipal court territorial jurisdiction and anything that mitigates the problem of surplus county judges, in that event will be of some help.

CRIMINAL PROCEDURE

Senate Bill 73 and Senate Bill 133²⁵ both effective January 1, 1960, have as their purpose the establishment of uniformity in practice and procedure in criminal cases in the minor courts and are evidence of the interest in this area of law taken by the Ohio State Bar Association and the Ohio Judicial Council.

Criminal Jurisdiction

We have already seen that the county-wide jurisdiction of county and municipal courts over a number of violations of state law has been cut back to the territorial boundaries of the respective courts, and in the case of county courts with more than one judge, even further cut back to the areas of separate jurisdiction.

²² OHIO REV. CODE § 1907.071 (1957).

²³ *Supra*, note 21.

²⁴ OHIO REV. CODE § 1907.041 (1957).

²⁵ 103d Gen. Ass. (1959).

Within these territorial limits, however, municipal courts have gained final jurisdiction over all misdemeanor cases and cases involving violations of ordinances of municipalities of the territory.²⁶

Scope of the Uniform Provisions

For all minor courts, as the definition of "magistrate" in section 2931.01²⁷ would suggest, including county, municipal, police and mayors' courts, new uniform procedure for arrests, searches, filing of affidavits or complaints, examination of the accused, bail, detention of a prisoner, arraignment, discharge of a prisoner, pleas, procedure thereupon in misdemeanor cases and felony cases, preliminary hearings, bind-overs, and bail forfeitures are set out at length in Senate Bill 73, *supra*.

Without attempting to detail how the new provisions for all courts inferior to the common pleas court differ from the former provisions for each court, which is beyond my ability to do without vast research or from experience with a varied practice in all the different minor courts, I will merely summarize the steps in the new procedure. The pattern is reassuringly familiar. There are no startling innovations. Great care has been taken in the new sections to specify the where's, when's and by or to whom's and to set up the order in which alternative courses of action are to be considered.

Definitions

Definitions of "peace officer", "prosecutor", and "offense" have been added to the definition of "magistrate" in Revised Code section 2935.01, 2937.01, and 2938.01, as amended by Senate Bill 73, *supra* and like "magistrate" become generic terms under which all sheriffs, police, marshals and constables; all prosecuting attorneys, solicitors, law directors, and special counsel; and all felonies, misdemeanors, violations of ordinances and public regulations, respectively, can be described without particularizing for most purposes. Unfortunately, the legislation which defines these useful terms, often fails to use them where they would serve very adequately.

Arrest

Upon arrest without a warrant by a peace officer or watchman, an affidavit describing the offense is to be filed with the court or magistrate directly, or with the prosecutor who is then to file it with the court or magistrate.²⁸

Private persons making an arrest must take the arrested person immediately to the most convenient judge, clerk of a court of record, magistrate, or to an officer authorized to execute criminal warrants who is in turn to take such person to the proper court or magistrate. If the officer

²⁶ S. B. 133, *supra* note 25, enacting OHIO REV. CODE § 2931.041.

²⁷ OHIO REV. CODE § 2931.01 (1957).

²⁸ S. B. 73, 103d Gen. Ass. (1959) amending OHIO REV. CODE § 2935.05.

does not file an affidavit stating the offense, the private person shall file such an affidavit with the proper court.²⁹

On the basis of the affidavit filed, the court, clerk or magistrate may then issue a warrant to the arresting peace officer, or to a convenient peace officer in the case of arrest by a private person, to receive custody of the arrested person.³⁰

In cases proceeding upon affidavit before arrest, the peace officer or private persons are to file the affidavit with the judge, clerk or magistrate, or with the prosecutor to be filed with the appropriate court.³¹

The judge, clerk or magistrate then issues the warrant for arrest, if it appears justified, or else refers the matter to the prosecutor. For misdemeanors, a citation or summons may be directed to issue instead, being served as in a civil action, or, most commonly in traffic cases, no summons or warrant need be issued at all unless a person fails to appear who was notified to appear by the peace officer at the time the offense was committed.

Bail may be given by anyone charged with violating an ordinance, whether apprised by warrant, summons or notification.³²

Doors and windows may be broken to make an arrest or execute a warrant for arrest or a search warrant, if admittance is refused. Entry cannot be made into a house or building not described in a search warrant.³³

Upon arrest on warrant, the person is to be taken to the issuing court or magistrate, or, if not available, to the clerk of court or deputy, or on out-of-county arrests, to the most convenient court, magistrate or clerk, and thereupon be let to bail.

If taken before the issuing court or magistrate, the court or magistrate is to inform the person of the charge, of the effect of various pleas, of his right to counsel, and if the charge is a felony, of the possible punishment and right to a preliminary hearing. The court or magistrate may then enter upon an examination of the charge or postpone it, all as provided in Revised Code section 2937.02,³⁴ to which reference is made in Revised Code section 2935.13.³⁵

If the charge is a felony or if the person cannot furnish bail, the person may immediately communicate with an attorney and "at least one" other relative or person to get counsel or arrange bail, and shall not be removed from the place of detention until an attorney has had an opportunity to confer privately with the person, or another person can be found

²⁹ S. B. 73, *supra*, amending OHIO REV. CODE § 2935.06.

³⁰ S. B. 73, *supra*, amending OHIO REV. CODE § 2935.08.

³¹ S. B. 73, *supra*, enacting OHIO REV. CODE § 2935.09.

³² S. B. 73, *supra*, enacting OHIO REV. CODE § 2935.10.

³³ S. B. 73, *supra*, enacting OHIO REV. CODE § 2935.12.

³⁴ Enacted by S. B. 73, *supra*.

³⁵ Enacted by S. B. 73, *supra*.

to arrange bail. It is made a criminal offense for the custodian of the arrested person to violate these provisions.³⁶

Persons held without commitment by court or magistrate may be required to be produced before the inquiring judge or magistrate or the court or magistrate issuing the warrant for arrest.³⁷

Pleas

Upon being arraigned, assuming that no oral or written motion to dismiss the affidavit be sustained, the accused may orally plead not guilty to a felony charge, or may plead guilty in writing. In misdemeanor cases, the accused may plead guilty or not guilty, may make a plea in bar of once in jeopardy, or may make a plea of no contest.

This last useful plea of no contest may be likened to a plea of *nolo contendere*, but perhaps it is better likened to the old common law plea of misdemeanor cases: *non vult contendere*, which probably signifies an acknowledgment that contest is fruitless rather than a confession of guilt. Such an interpretation is borne out by the latter provision in the same section that an accused may be found guilty or not guilty. In any event, the plea may mitigate the penalty and certainly it has value in allowing a court otherwise without final jurisdiction, to go forward and make its finding and impose a sentence, if any. It has, of course, the value to the accused of a not guilty plea in that it cannot be used against him in a civil suit for the same act, and yet permits prompt disposition of the case.³⁸

The County Court as a Court of Record

While the impact of making the county courts courts of record may have bearing on other than criminal causes, it is in connection with criminal causes that it has the greatest interest to most, and for that reason is included here.

A burning question throughout the discussion of the new criminal provisions was whether the county courts, now to be served by clerks and elaborate provisions for record-keeping, thereby became courts of record. In an attempt to resolve the issue, a Senate amendment provided in House Bill 571, *supra*, that on and after January 1, 1963, county courts are to be considered courts of record for all purposes of law. Yet this may only beg the question of whether the court is in fact a court of record before that date. Every condition for constituting a court of record would appear to be met. Only by resort to the old maxim, *Expressio unius est exclusio alterius*, can the issue be considered resolved.³⁹

Preliminary Examination

Where a plea of not guilty is entered and the accused does not waive examination the magistrate may then or later proceed with a preliminary

³⁶ S. B. 73, *supra*, enacting OHIO REV. CODE § 2935.14.

³⁷ S. B. 73, *supra*, enacting OHIO REV. CODE § 2935.16.

³⁸ S. B. 73, *supra*, enacting OHIO REV. CODE §§ 2937.06 -.08.

³⁹ H. B. 571, 103 Gen. Ass. (1959), enacting OHIO REV. CODE § 1907.012.

hearing, with notice to the prosecutor and accused.⁴⁰

At the hearing, upon giving the usual cautions to the accused, the magistrate may find the crime charged was committed and that defendant should be held and bound over to the grand jury, or be held and bound over to the common pleas court on some other charge which the evidence indicates was committed by the accused, or reduce the charge to a charge of misdemeanor and proceed to try it, if it is within the court's jurisdiction so to do, or require the accused to appear before the appropriate inferior court for trial, or order discharge of the accused, which shall not bar further prosecution.⁴¹

No appeal lies from the decision of the court on preliminary examination.⁴²

Other Matters of Procedure and Right

Detailed provisions for receipt of bail, sureties, and forfeitures are also set out in Senate Bill 73, *supra*, as are provisions for speedy trial,⁴³ the saving of juvenile court jurisdiction in cases involving minors under eighteen years of age,⁴⁴ control by the court or magistrate of proceedings upon trial,⁴⁵ governing rules of evidence and procedure,⁴⁶ presumption of innocence of the accused,⁴⁷ and the familiar miscellany of order of presentation of evidence.⁴⁸ The prosecutor is given the right to delegate his responsibility to another attorney other than a private attorney for the complaining witness,⁴⁹ and a person accused of a misdemeanor may request to be tried in his absence, although such trial is not a matter of right.⁵⁰

Jury Trials

Senate Bill 73 and House Bill 571, *supra*, both enact new law relative to jury trials in the minor courts. While apparently reconcilable, the provisions are not identical, and this may prove vexing, to say the very least.

Senate Bill 73, enacting Revised Code section 2938.04, makes it clear that while a jury trial is a matter of right in criminal cases involving imprisonment or a fine in excess of fifty dollars, and failure to waive the right in a court not of record requires that the magistrate certify the case to a court of record, yet in a court of record the failure to claim the right to a jury constitutes a waiver.

House Bill 571, however, says that failure to demand a jury in a

⁴⁰ S. B. 73, *supra*, note 38, enacting OHIO REV. CODE § 2937.10.

⁴¹ S. B. 73, *supra*, enacting OHIO REV. CODE §§ 2937.12 .13.

⁴² OHIO REV. CODE § 2937.13 (1959).

⁴³ OHIO REV. CODE § 2938.03 (1959).

⁴⁴ OHIO REV. CODE § 2938.02 (1959).

⁴⁵ OHIO REV. CODE § 2938.07 (1959).

⁴⁶ OHIO REV. CODE § 2938.15 (1959).

⁴⁷ OHIO REV. CODE § 2938.08 (1959).

⁴⁸ OHIO REV. CODE § 2938.11 (1959).

⁴⁹ OHIO REV. CODE § 2938.13 (1959).

⁵⁰ OHIO REV. CODE § 2938.12 (1959).

county court (which, as we have seen, may not be a court of record for several years) is a waiver of the right.⁵¹

Both agree that a jury demand is to be in writing.⁵² Senate Bill 73 goes on to say that the demand may be withdrawn in writing, with costs incurred to be paid by the accused, and that such withdrawal shall not effect a re-transfer of a case to a court not of record.⁵³

The two bills begin to run their parallel courses again in stating when the jury demands shall be made.

Senate Bill 73, enacting Revised Code section 2938.04, says that in courts of record, the demand is to be filed with the clerk of courts not less than three days prior to trial or within a day after notice, whichever is later.

House Bill 571, enacting new section 1913.09, says that in county courts the demand ". . . must be made by the accused before the court proceeds to inquire into the merits of the cause, otherwise a jury shall be deemed to be waived." This is consistent with a view of the county court as a court not of record, considering whether or not it will have to certify its case to another court for trial, but is hardly suitable to a court of record as a county court will surely be after January 1, 1963, under the provisions of Revised Code section 1907.012, *supra*, amended by House Bill 571.

Senate Bill 73, in enacting Revised Code section 2938.06, states that if the number of jurors is not stated in the claim, the number shall be twelve, but the accused may stipulate for a jury of six, in which case peremptory challenges are cut down to two for each side. House Bill 571, relative to county courts however, states simply in Revised Code section 1913.09, *supra*, that there shall be twelve jurors in any criminal action, which will get us by without trouble until 1963, if county courts are meantime not courts of record.

Perhaps a separate article should be written on how to keep track of amendments to House bills being made in the Senate at the same time that parallel Senate bills are being considered and amended in the House.

Appeals

Major provisions of the new law on appellate procedure in criminal cases in the minor courts make it unnecessary to make a motion for a new trial as a first step to appeals involving the sufficiency and weight of the evidence.⁵⁴

Where a motion for a new trial is made, it is to be filed within three days of the verdict or, under another change of the law, within three days of the decision of the court where trial by jury has been

⁵¹ OHIO REV. CODE § 1913.09 (1959)

⁵² S. B. 73, enacting OHIO REV. CODE § 2938.04 and H. B. 571, enacting OHIO REV. CODE § 1913.09, 103d Gen. Ass. (1959).

⁵³ OHIO REV. CODE § 2938.05 (1959).

⁵⁴ S. B. 133, 103d Gen. Ass. (1959), enacting OHIO REV. CODE § 2945.831.

waived, or within three days of a finding by the court that the defendant was unavoidably prevented from filing the motion on time.

Provisions for motion for a new trial on account of newly-discovered evidence permit the one hundred twenty day time period to run from the date of the decision of the court, similarly, where trial has been waived, or, as before, from the verdict of the jury.⁵⁵ Thereupon, a new trial may be granted whether the motion is directed to the decision of the court or to a verdict of a jury.

Motion for a new trial or notice of appeal suspends execution of the sentence under new Ohio Revised Code section 2953.051.⁵⁶

The bill of exceptions may also be directed to the decision of the court where jury trial is waived, as well as to the verdict of the jury, where the exception is that the decision (or verdict) is not sustained by sufficient evidence or is contrary to law.

The time for filing the bill of exceptions may run, under the new law, not only from the date of the judgment and sentence or over-ruling of the motion for a new trial, but also may run in appropriate circumstances from the date of an order placing defendant on probation and suspending the imposition of sentence.

The "reviewing court" and not merely the court of appeals or supreme court may order a full transcript where a partial transcript of the evidence is filed, and the time of filing the full transcript on court order will not affect the timeliness of the filing of a bill of exceptions by the defendant.⁵⁷

The rules governing civil actions on taking and recording of exceptions apply to criminal cases.⁵⁸

Appeals in criminal cases from ordinance violation cases and judgments and final orders of all courts inferior to the common pleas court may be reviewed by the common pleas courts, as now. Judgments and final orders of courts of record only may be reviewed by courts of appeal.

In turn, judgments and final orders of the courts of appeal on constitutional questions may be appealed as a matter of right. Felony cases and other criminal cases of public or great general interest may be appealed if a motion to certify is allowed.⁵⁹

In order to clear the municipal court dockets of idle appeals, never pursued, the notice of appeal may be stricken from the files if no praecipe for a transcript is filed within ninety days of filing notice, and if no fee is paid for the transcript.⁶⁰

The time for filing appeals from judgments or final orders in mag-

⁵⁵ S. B. 133, *supra*, amending OHIO REV. CODE § 2945.80.

⁵⁶ S. B. 133, *supra*.

⁵⁷ S. B. 133, *supra*, amending OHIO REV. CODE § 2945.65.

⁵⁸ S. B. 133, *supra*, amending OHIO REV. CODE § 2945.332.

⁵⁹ S. B. 133, *supra*, amending OHIO REV. CODE § 2953.02.

⁶⁰ H. B. 571, 103d Gen. Ass. (1959), amending OHIO REV. CODE § 1901.30.

istrate courts is specified as ten days from the date of judgment, sentence or order placing a defendant on probation and suspending sentence.⁶¹

UNIFORM RULES

Of great interest is the new provision of law permitting the Supreme Court of Ohio to make uniform rules for practice and procedure in the minor courts, dealing with whatever the court wishes, presumably, but specifically with

... (A) Separation of arraignment and trial of traffic and other types of cases; (B) consolidation of cases for trial; (C) transfer of cases within the same county for the purpose of trial; (D) designation of special referees for hearings or for receiving pleas or bail at times when courts are not in session; and (E) fixing of reasonable bonds, and disposition of cases in which bonds have been forfeited.⁶²

The rules will bind all minor courts and supersede local rules. While the new enactment on criminal procedure will regularize and make uniform many proceedings which before varied greatly from court to court, the new authority to make uniform rules will fill in many gaps. It has further significance to long-time advocates of judicial rule-making who feel that the legislature is assuming an authority it should not exercise in specifying all the harrowing details of procedure. These advocates may see this as an opening battle won in a war for further extension of rule-making power. To traffic safety enthusiasts who have long urged the use of a uniform traffic ticket, it represents the means to achieve a long-time goal.

UNSOLVED PROBLEMS

Each legislature solves some old problems but creates a few new ones. Fortunately, these are seldom of great moment. Some have already been pointed out. Others involve references to changes which will need to be incorporated into some unchanged sections elsewhere in the Code. For instance, Revised Code section 2305.01 was left hanging in space when House Bill 868⁶³ failed to get out of the Senate Rules Committee. Reference is still made not only to the justice of the peace but also to the former concurrent jurisdiction of the common pleas court in cases involving sums from one hundred dollars to three hundred dollars.

Also, references to civil jurisdiction in mayors' courts still turn up in sections dealing with service of process and appeals.⁶⁴

THE FUTURE

The Legislature has taken some pride in improvements which have

⁶¹ OHIO REV. CODE § 2945.65 (1959).

⁶² S. B. 73, 103d Gen. Ass. (1959), enacting OHIO REV. CODE § 2937.46.

⁶³ 103d Gen. Ass. (1959).

⁶⁴ OHIO REV. CODE §§ 1905.16, .22 amended by H. B. 571, *supra* note 60, but not amended enough.

been made in recent sessions, particularly in the last two sessions when the fruits of earlier efforts have begun to be realized. Yet progress means movement towards a goal and what the Legislature's goal is has never been stated. The trends evidence an unacknowledged policy, however, to make the county and municipal courts increasingly useful as area courts, taking over not only the duties of the justice of the peace, but some of the duties of mayors' and police courts, to give these courts more complete jurisdiction within the areas they serve, to make them truly professional courts, and to give them a good many cases now going to common pleas courts. The policy seems to be meeting with general public approval, but the volume of traffic cases to be handled locally, the dearth of lawyers in some areas who are eligible to run for judgeships, and the fact that some common pleas courts are far from being overburdened with work now make it difficult to enact laws of general application which are suitable to all circumstances. These considerations will slow efforts to get rid of mayors' and police courts, further enlarge money limits on jurisdiction, and confer final jurisdiction in more instances.